

DOCKET NO: 328255US0PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF : EXAMINER: PAK, MICHAEL D.  
RAINER WALDMANN, ET AL. :  
SERIAL NO: 09/129,758 : ATTN: MAIL STOP PETITIONS  
FILED: SEPTEMBER 15, 2010 :  
FOR: MAMMAL NEURONAL ACID : GROUP ART UNIT: 1646  
SENSING CATIONIC CHANNEL,  
CLONING AND APPLICATIONS  
THEREOF

PETITION UNDER 37 C.F.R. § 1.181(a)(3)  
TO WITHDRAW NOTICE OF ABANDONMENT

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

The undersigned Petitioners hereby petition the Director under 37 C.F.R. § 1.181(a)(3) to invoke supervisory authority and respectfully request that the Examiner be directed to withdraw the notice of abandonment mailed on August 23, 2011.

STATEMENT OF FACTS

04/09/10 A Petition to Revive under 37 C.F.R. § 1.137(b) was filed along with the requisite fee.

07/07/10 An Oath/Declaration and Power of Attorney document was filed with a Request for Status under 37 C.F.R. § 1.42.

07/15/10 A Decision was mailed granting the Petition to Revive but dismissing the Request for Status.

09/15/10      A Supplemental Oath/Declaration and Power of Attorney document was  
timely filed with a Renewed Request for Status under 37 C.F.R. § 1.42.

04/20/11      A Decision was mailed dismissing the Renewed Request for Status.

05/20/11      A Renewed Petition for Status under 37 C.F.R. § 1.42 was timely filed.

07/29/11      A Decision was mailed granting the Renewed Petition for Status.

08/23/11      A Notice of Abandonment was mailed.

REMARKS

The Notice of Abandonment dated August 23, 2011 states that the above-identified application went abandoned “per the Decision dated July 15, 2010.” As evidenced by the attached documents referenced hereinabove, which were obtained from the Patent Application Information Retrieval (PAIR) system, although the Decision dated July 15, 2010 **granted** the Petition to Revive but dismissed the Request for Status, the Decision dated July 29, 2011 subsequently **granted** the Request for Status. As a result, the Notice of Abandonment dated August 23, 2011 was clearly mailed in error.

Consequently, it is respectfully requested that this petition be GRANTED and notification to this effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
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09/129,758	MAMMAL NEURONAL ACID SENSING CATIONIC CHANNEL, CLONING AND APPLICATIONS THEREOF.	328255US0PCT	10-21-2011::14:28:25
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**Bibliographic Data**

Application Number:	09/129,758	Customer Number:	22850
Filing or 371 (c) Date:	-	Status:	Abandoned -- Incomplete Application (Pre-examination)
Application Type:	Utility	Status Date:	08-22-2011
Examiner Name:	<u>PAK, MICHAEL D</u>	Location:	ELECTRONIC
Group Art Unit:	1646	Location Date:	-
Confirmation Number:	5113	Earliest Publication No:	-
Attorney Docket Number:	328255US0PCT	Earliest Publication Date:	-
Class / Subclass:	435/007.200	Patent Number:	-
First Named Inventor:	RAINER WALDMANN , DE L' ESTEREL, (FR)	Issue Date of Patent:	-

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Title of Invention:	MAMMAL NEURONAL ACID SENSING CATIONIC CHANNEL, CLONING AND APPLICATIONS THEREOF.
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**Close Window**

09/129,758 MAMMAL NEURONAL ACID SENSING CATIONIC CHANNEL, CLONING AND APPLICATIONS THEREOF. 328255US0PCT 10-21-2011::14:44:32

**This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.**

### Bibliographic Data

Mail Room Date	Document Code	Document Description	Document Category	Page Count
08-23-2011	M327	<b>Miscellaneous Communication to Applicant - No Action Count</b>	PROSECUTION	1
08-23-2011	ABN	Abandonment	PROSECUTION	1
08-23-2011	OA.EMAIL	Email Notification	PROSECUTION	1
08-03-2011	OA.EMAIL	Email Notification	PROSECUTION	1
07-29-2011	PET.DEC.OIPE	Petition decision routed to the OIPE to act on the decision or continue prosecution.	PROSECUTION	1
05-20-2011	PET.OP	Petition for review by the Office of Petitions.	PROSECUTION	4
05-20-2011	OATH	Oath or Declaration filed	PROSECUTION	25
05-20-2011	N417	EFS Acknowledgment Receipt	PROSECUTION	2
05-20-2011	TRAN.LET	Transmittal Letter	PROSECUTION	1
04-26-2011	OA.EMAIL	Email Notification	PROSECUTION	1
04-20-2011	PET.DEC.OIPE	Petition decision routed to the OIPE to act on the decision or continue prosecution.	PROSECUTION	3
09-15-2010	TRAN.LET	Transmittal Letter	PROSECUTION	1
09-15-2010	OATH	Oath or Declaration filed	PROSECUTION	25
09-15-2010	N417	EFS Acknowledgment Receipt	PROSECUTION	2
07-22-2010	OA.EMAIL	Email Notification	PROSECUTION	1
07-15-2010	PET.DEC.OIPE	Petition decision routed to the OIPE to act on the decision or continue prosecution.	PROSECUTION	4
07-07-2010	TRAN.LET	Transmittal Letter	PROSECUTION	1
07-07-2010	OATH	Oath or Declaration filed	PROSECUTION	24
07-07-2010	N417	EFS Acknowledgment Receipt	PROSECUTION	2
04-09-2010	PET.PCT	Petition for review by the PCT legal office.	PROSECUTION	11
04-09-2010	WFEE	Fee Worksheet (SB06)	PROSECUTION	2
04-09-2010	N417	EFS Acknowledgment Receipt	PROSECUTION	2
07-31-2009	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
07-31-2009	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
07-31-2009	OA.EMAIL	Email Notification	PROSECUTION	1
07-16-2009	PA..	Power of Attorney	PROSECUTION	2
07-16-2009	R3.73B	Assignee showing of ownership per 37 CFR 3.73(b).	PROSECUTION	4
07-16-2009	N417	EFS Acknowledgment Receipt	PROSECUTION	2
06-25-2009	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
06-25-2009	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	5
06-25-2009	NPL	Non Patent Literature	PRIOR ART	8
06-25-2009	NPL	Non Patent Literature	PRIOR ART	5
06-25-2009	NPL	Non Patent Literature	PRIOR ART	6
06-25-2009	NPL	Non Patent Literature	PRIOR ART	7
06-25-2009	NPL	Non Patent Literature	PRIOR ART	3
06-25-2009	NPL	Non Patent Literature	PRIOR ART	17
06-25-2009	NPL	Non Patent Literature	PRIOR ART	5

06-25-2009	NPL	Non Patent Literature	PRIOR ART	3
06-25-2009	NPL	Non Patent Literature	PRIOR ART	6
06-25-2009	NPL	Non Patent Literature	PRIOR ART	28
06-25-2009	NPL	Non Patent Literature	PRIOR ART	3
06-25-2009	NPL	Non Patent Literature	PRIOR ART	6
06-25-2009	WFEE	Fee Worksheet (SB06)	PROSECUTION	2
06-25-2009	N417	EFS Acknowledgment Receipt	PROSECUTION	3
06-25-2009	TRAN.LET	Transmittal Letter	PROSECUTION	1
06-25-2009	XT/	Extension of Time	PROSECUTION	1
06-25-2009	WFEE	Fee Worksheet (SB06)	PROSECUTION	1
03-25-2009	TRAN.LET	Transmittal Letter	PROSECUTION	2
03-25-2009	IDS	Information Disclosure Statement (IDS) Form (SB08)	PROSECUTION	3
03-25-2009	NPL	Non Patent Literature	PRIOR ART	3
03-25-2009	NPL	Non Patent Literature	PRIOR ART	1
03-25-2009	371P	Documents submitted with 371 Applications	PROSECUTION	3
03-25-2009	NPL	Non Patent Literature	PRIOR ART	15
03-25-2009	NPL	Non Patent Literature	PRIOR ART	48
03-25-2009	NPL	Non Patent Literature	PRIOR ART	3
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	9
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	5
03-25-2009	NPL	Non Patent Literature	PRIOR ART	5
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	6
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	6
03-25-2009	NPL	Non Patent Literature	PRIOR ART	31
03-25-2009	NPL	Non Patent Literature	PRIOR ART	29
03-25-2009	NPL	Non Patent Literature	PRIOR ART	6
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	11
03-25-2009	NPL	Non Patent Literature	PRIOR ART	5
03-25-2009	NPL	Non Patent Literature	PRIOR ART	7
03-25-2009	NPL	Non Patent Literature	PRIOR ART	17
03-25-2009	NPL	Non Patent Literature	PRIOR ART	5
03-25-2009	NPL	Non Patent Literature	PRIOR ART	14
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	3
03-25-2009	NPL	Non Patent Literature	PRIOR ART	6
03-25-2009	NPL	Non Patent Literature	PRIOR ART	9
03-25-2009	NPL	Non Patent Literature	PRIOR ART	8
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	NPL	Non Patent Literature	PRIOR ART	10
03-25-2009	NPL	Non Patent Literature	PRIOR ART	8
03-25-2009	NPL	Non Patent Literature	PRIOR ART	6
03-25-2009	NPL	Non Patent Literature	PRIOR ART	13
03-25-2009	NPL	Non Patent Literature	PRIOR ART	2
03-25-2009	NPL	Non Patent Literature	PRIOR ART	15
03-25-2009	NPL	Non Patent Literature	PRIOR ART	2
03-25-2009	NPL	Non Patent Literature	PRIOR ART	6
03-25-2009	NPL	Non Patent Literature	PRIOR ART	5

03-25-2009	NPL	Non Patent Literature	PRIOR ART	6
03-25-2009	NPL	Non Patent Literature	PRIOR ART	4
03-25-2009	ARTIFACT	Artifact sheet indicating an item has been filed which cannot be scanned	PROSECUTION	1
12-26-2008	CTNF	Non-Final Rejection	PROSECUTION	9
12-26-2008	SRNT	Examiner's search strategy and results	PROSECUTION	1
12-26-2008	FWCLM	Index of Claims	PROSECUTION	1
12-26-2008	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
08-18-2008	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
08-18-2008	CLM	Claims	PROSECUTION	4
08-18-2008	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	4
08-18-2008	NPL	Non Patent Literature	PROSECUTION	34
08-18-2008	WFEE	Fee Worksheet (SB06)	PROSECUTION	2
08-18-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	2
08-18-2008	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
08-18-2008	XT/	Extension of Time	PROSECUTION	1
07-17-2008	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
07-17-2008	PA..	Power of Attorney	PROSECUTION	1
07-17-2008	R3.73B	Assignee showing of ownership per 37 CFR 3.73(b).	PROSECUTION	4
07-17-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	2
02-20-2008	CTNF	Non-Final Rejection	PROSECUTION	11
02-20-2008	FWCLM	Index of Claims	PROSECUTION	1
02-20-2008	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
02-19-2008	SRNT	Examiner's search strategy and results	PROSECUTION	1
12-03-2007	N417	EFS Acknowledgment Receipt	PROSECUTION	2
12-03-2007	SA..	Supplemental Response or Supplemental Amendment	PROSECUTION	2
12-03-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	23
11-16-2007	WFEE	Fee Worksheet (SB06)	PROSECUTION	2
11-16-2007	N417	EFS Acknowledgment Receipt	PROSECUTION	3
11-16-2007	RCEX	Request for Continued Examination (RCE)	PROSECUTION	1
11-16-2007	XT/	Extension of Time	PROSECUTION	1
11-16-2007	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
11-16-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	3
11-16-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	11
11-16-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	9
11-16-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	3
11-16-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	8
11-16-2007	ANE.I	Amendment After Final or under 37CFR 1.312, initialed by the examiner.	PROSECUTION	1
11-16-2007	WFEE	Fee Worksheet (SB06)	PROSECUTION	1
06-13-2007	ANE.I	Amendment After Final or under 37CFR 1.312, initialed by the examiner.	PROSECUTION	1
06-13-2007	FWCLM	Index of Claims	PROSECUTION	1
06-13-2007	CTAV	Advisory Action (PTOL-303)	PROSECUTION	3
06-13-2007	ANE.I	Amendment After Final or under 37CFR 1.312, initialed by the examiner.	PROSECUTION	1
06-13-2007	CLM	Claims	PROSECUTION	1
05-31-2007	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
05-31-2007	136A	Authorization for Extension of Time all	PROSECUTION	1

		replies		
05-31-2007	N/AP	Notice of Appeal Filed	PROSECUTION	1
05-02-2007	A.NE	Amendment After Final	PROSECUTION	2
05-02-2007	CLM	Claims	PROSECUTION	3
05-02-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	10
05-02-2007	XT/	Extension of Time	PROSECUTION	1
05-02-2007	WFEE	Fee Worksheet (SB06)	PROSECUTION	1
11-29-2006	CTFR	Final Rejection	PROSECUTION	13
11-29-2006	FWCLM	Index of Claims	PROSECUTION	1
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11-29-2006	SRFW		PROSECUTION	1
11-22-2006	SRNT	Examiner's search strategy and results	PROSECUTION	1
08-24-2006	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
08-24-2006	CLM	Claims	PROSECUTION	3
08-24-2006	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	7
08-24-2006	XT/	Extension of Time	PROSECUTION	1
08-24-2006	LET.	Miscellaneous Incoming Letter	PROSECUTION	3
08-24-2006	WFEE	Fee Worksheet (SB06)	PROSECUTION	1
02-22-2006	CTNF	Non-Final Rejection	PROSECUTION	25
02-22-2006	FWCLM	Index of Claims	PROSECUTION	1
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02-22-2006	SRFW		PROSECUTION	1
02-21-2006	SRNT	Examiner's search strategy and results	PROSECUTION	3
12-07-2005	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
12-07-2005	CLM	Claims	PROSECUTION	3
12-07-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	39
12-07-2005	RCEX	Request for Continued Examination (RCE)	PROSECUTION	1
12-07-2005	LET.	Miscellaneous Incoming Letter	PROSECUTION	3
10-11-2005	N/AP	Notice of Appeal Filed	PROSECUTION	1
10-11-2005	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
10-11-2005	XT/	Extension of Time	PROSECUTION	1
04-06-2005	CTNF	Non-Final Rejection	PROSECUTION	22
04-06-2005	FWCLM	Index of Claims	PROSECUTION	1
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04-06-2005	SRFW		PROSECUTION	1
04-04-2005	SRNT	Examiner's search strategy and results	PROSECUTION	1
03-14-2005	RCEX	Request for Continued Examination (RCE)	PROSECUTION	2
03-14-2005	CLM	Claims	PROSECUTION	3
03-14-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	74
03-14-2005	LET.	Miscellaneous Incoming Letter	PROSECUTION	3
03-14-2005	XT/	Extension of Time	PROSECUTION	1
09-08-2004	CTFR	Final Rejection	PROSECUTION	15
09-08-2004	FWCLM	Index of Claims	PROSECUTION	1
		Search information including classification, databases and other search related notes		
09-08-2004	SRFW		PROSECUTION	1
09-08-2004	BIB	Bibliographic Data Sheet	PROSECUTION	2
09-02-2004	SRNT	Examiner's search strategy and results	PROSECUTION	1
08-20-2004	SRNT	Examiner's search strategy and results	PROSECUTION	1
05-19-2004	A...	Amendment/Req. Reconsideration-After	PROSECUTION	1

05-19-2004	CLM	Non-Final Reject Claims	PROSECUTION	4
05-19-2004	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	9
05-19-2004	NPL	Non Patent Literature	PRIOR ART	3
05-19-2004	NPL	Non Patent Literature	PRIOR ART	1
05-19-2004	NPL	Non Patent Literature	PRIOR ART	2
05-19-2004	NPL	Non Patent Literature	PRIOR ART	1
05-19-2004	NPL	Non Patent Literature	PRIOR ART	1
05-19-2004	NPL	Non Patent Literature	PRIOR ART	2
05-19-2004	NPL	Non Patent Literature	PRIOR ART	1
05-19-2004	NPL	Non Patent Literature	PRIOR ART	1
05-19-2004	NPL	Non Patent Literature	PRIOR ART	14
05-19-2004	NPL	Non Patent Literature	PRIOR ART	4
05-19-2004	NPL	Non Patent Literature	PRIOR ART	5
05-19-2004	NPL	Non Patent Literature	PRIOR ART	6
05-19-2004	XT/	Extension of Time	PROSECUTION	1
05-19-2004	LET.	Miscellaneous Incoming Letter	PROSECUTION	3
11-17-2003	CTNF	Non-Final Rejection	PROSECUTION	25
11-17-2003	892	List of references cited by examiner	PRIOR ART	1
11-15-2003	SRNT	Examiner's search strategy and results	PROSECUTION	2
10-29-2003	SRNT	Examiner's search strategy and results	PROSECUTION	1
10-24-2003	PETDEC	Petition Decision	PROSECUTION	1
08-14-2003	PET.	Petition Entered	PROSECUTION	1
08-14-2003	RCEX	Request for Continued Examination (RCE)	PROSECUTION	1
08-13-2003	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
08-13-2003	CLM	Claims	PROSECUTION	4
08-13-2003	SPEC	Specification	PROSECUTION	1
08-13-2003	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	7
08-13-2003	DRW	Drawings-only black and white line drawings	PROSECUTION	9
08-13-2003	XT/	Extension of Time	PROSECUTION	1
08-13-2003	LET.	Miscellaneous Incoming Letter	PROSECUTION	3
02-11-2003	CTFR	Final Rejection	PROSECUTION	24
02-11-2003	NFDR	Notice of Formal Drawings Required	PROSECUTION	1
02-09-2003	SRNT	Examiner's search strategy and results	PROSECUTION	1
12-05-2002	FRPR	Certified Copy of Foreign Priority Application	PROSECUTION	76
12-05-2002	FRPR	Certified Copy of Foreign Priority Application	PROSECUTION	60
12-05-2002	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
11-18-2002	CFILE	Request for Corrected Filing Receipt	PROSECUTION	3
11-12-2002	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
11-12-2002	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	38
11-12-2002	SPEC	Specification	PROSECUTION	26
11-12-2002	XT/	Extension of Time	PROSECUTION	1
11-12-2002	LET.	Miscellaneous Incoming Letter	PROSECUTION	3
05-07-2002	CTNF	Non-Final Rejection	PROSECUTION	22
05-06-2002	SRNT	Examiner's search strategy and results	PROSECUTION	8
01-22-2002	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
01-22-2002	SPEC	Specification	PROSECUTION	3
01-22-2002	CLM	Claims	PROSECUTION	2
01-22-2002	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	16



01-22-2002	SEQLIST	Sequence Listing	PROSECUTION	34
01-22-2002	LET.	Miscellaneous Incoming Letter	PROSECUTION	5
10-02-2001	CTMS	Miscellaneous Action with SSP	PROSECUTION	3
09-14-2001	SRNT	Examiner's search strategy and results	PROSECUTION	1
07-20-2001	XT/	Extension of Time	PROSECUTION	1
07-20-2001	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
07-13-2001	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
07-13-2001	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
05-11-2001	CTRS	Requirement for Restriction/Election	PROSECUTION	7
12-19-2000	CTMS	Miscellaneous Action with SSP	PROSECUTION	1
10-03-2000	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	3
09-27-2000	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
09-27-2000	CLM	Claims	PROSECUTION	4
09-27-2000	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
09-27-2000	XT/	Extension of Time	PROSECUTION	2
08-17-2000	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
08-17-2000	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	2
05-24-2000	CTRS	Requirement for Restriction/Election	PROSECUTION	8
03-07-2000	ELC.	Response to Election / Restriction Filed	PROSECUTION	1
03-07-2000	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	3
03-07-2000	XT/	Extension of Time	PROSECUTION	2
09-30-1999	CTRS	Requirement for Restriction/Election	PROSECUTION	6
03-25-1999	LET.	Miscellaneous Incoming Letter	PROSECUTION	2
03-15-1999	CRFL	CRF Sequence Listing Filed	PROSECUTION	6
02-01-1999	OATH	Oath or Declaration filed	PROSECUTION	3
02-01-1999	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
02-01-1999	SPEC	Specification	PROSECUTION	3
02-01-1999	CLM	Claims	PROSECUTION	2
02-01-1999	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	2
02-01-1999	SEQLIST	Sequence Listing	PROSECUTION	34
02-01-1999	LET.	Miscellaneous Incoming Letter	PROSECUTION	7
02-01-1999	SPEC	Specification	PROSECUTION	26
02-01-1999	CLM	Claims	PROSECUTION	5
02-01-1999	ABST	Abstract	PROSECUTION	1
08-31-1998	PEFN	Pre-Exam Formalities Notice	PROSECUTION	1
08-28-1998	CTMS	Miscellaneous Action with SSP	PROSECUTION	1
08-05-1998	LET.	Miscellaneous Incoming Letter	AS FILED	2
08-05-1998	SPECNO	Specification - Not in English	AS FILED	23
08-05-1998	SEQLIST	Sequence Listing	AS FILED	20
08-05-1998	CLM	Claims	AS FILED	3
08-05-1998	ABST	Abstract	AS FILED	3
08-05-1998	DRW	Drawings-only black and white line drawings	AS FILED	9
08-05-1998	OATH	Oath or Declaration filed	AS FILED	2
08-05-1998	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
08-05-1998	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1

08-05-1998	FWCLM	Index of Claims	PROSECUTION	1
08-05-1998	TRNA	Transmittal of New Application	PROSECUTION	2
08-05-1998	DRW	Drawings-only black and white line drawings	PROSECUTION	9
08-05-1998	SPECNO	Specification - Not in English	PROSECUTION	49
08-05-1998	OATH	Oath or Declaration filed	PROSECUTION	2
08-05-1998	WFEE	Fee Worksheet (SB06)	PROSECUTION	2
08-05-1998	WFEE	Fee Worksheet (SB06)	PROSECUTION	1
08-05-1998	LET.	Miscellaneous Incoming Letter	PROSECUTION	2
08-05-1998	P.PAMPHLET	WIPO Publication - Non-English version	PROSECUTION	65

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**Close Window**

## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	7384277
<b>Application Number:</b>	09129758
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	5113
<b>Title of Invention:</b>	MAMMAL NEURONAL ACID SENSING CATIONIC CHANNEL, CLONING AND APPLICATIONS THEREOF.
<b>First Named Inventor/Applicant Name:</b>	RAINER WALDMANN
<b>Customer Number:</b>	22850
<b>Filer:</b>	Marvin Jay Spivak/Kathy Mankin
<b>Filer Authorized By:</b>	Marvin Jay Spivak
<b>Attorney Docket Number:</b>	328255US0PCT
<b>Receipt Date:</b>	09-APR-2010
<b>Filing Date:</b>	05-AUG-1998
<b>Time Stamp:</b>	12:53:21
<b>Application Type:</b>	U.S. National Stage under 35 USC 371

### Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	\$ 1620
RAM confirmation Number	11523
Deposit Account	
Authorized User	

### File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
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1	Petition to make Special under PCT-Patent Pros Hwy	328255USPetition.PDF	586692	no	11
			62a391c6086b993820bf66fe5e4928e5d6ff59cd		

**Warnings:**

**Information:**

2	Fee Worksheet (PTO-875)	fee-info.pdf	30631	no	2
			2d88f97ea40fe3e1231d593548cf1a2b0f03aa49		

**Warnings:**

**Information:**

<b>Total Files Size (in bytes):</b>			617323
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**New Applications Under 35 U.S.C. 111**

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

**National Stage of an International Application under 35 U.S.C. 371**

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

**New International Application Filed with the USPTO as a Receiving Office**

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

DOCKET NO: 328255US0PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
RAINER WALDMANN, ET AL : EXAMINER: BASI  
SERIAL NO: 09/129,758 :  
FILED: AUGUST 5, 1998 : GROUP ART UNIT: 1646  
FOR: MAMMAL NEURONAL ACI :  
SENSING CATIONIC CHANNEL,  
CLONING AND APPLICATIONS  
THEREOF

**37 CFR 1.137(b) PETITION TO REVIVE**

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

On April 9, 2010, the undersigned received a telephone call from Mr. Boris Miles of the USPTO PCT Legal Office. During this conversation, the undersigned was advised that the above-identified application was filed on August 5, 1998 as a National Stage application of PCT/FR98/00270 which was filed February 11, 1998. The filing on August 5, 1998 was not accompanied by the requisite basic statutory fees.

On August 28, 1998, the USPTO mailed a Notice to file Missing Parts including, amongst other requirements, the payment of the basic filing fee (attached).

On February 1, 1999, a reply to this Notice was filed including, amongst other papers, a check to pay the basic statutory basic filing fee, the additional claim fees, the surcharge, payment for the statutory assignment filing fee, and the fee for a three months extension of time (see attached).

Since that time, the USPTO and the Applicants through different attorneys-of-record have been engaged in prosecution seeking allowable subject matter.

**37 CFR 1.137(B) Petition to Revive**

In the April 8, 2010 discussion, Mr. Miles of the USPTO PCT Legal Office informed the undersigned that the rules in effect at that time, and in particular 37 C.F.R. 1.494, required that the payment of the basic statutory fees must be filed within a prescribed period of time and that time expired on October 11, 1998. Therefore, Mr. Miles informed the undersigned that the application has been effectively abandoned since the October 11, 1998 date as the fees were not paid in time.

While the undersigned attorney-of-record was not the attorney at that time, in light of the fact that all parties involved were under the belief that the file was in order, the required fees were paid, and prosecution of the claims commenced and that the undersigned has confirmed with the Applicants that there never was an intention to abandon this application, Applicants request revival of the above-identified application on the basis that the abandonment was unintentional. Although the date in question was some time ago, as the abandoned status was just made aware to the Applicants on April 8, 2010, the entire delay in filing of this a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The requisite fee for processing this petition as set forth in §1.17(m) is attached. Any further fees necessary to process this request may be charged to the deposit account associated with the Customer Number noted below.

Application No. 09/129,758  
**37 CFR 1.137(B) Petition to Revive**

In view of the foregoing, Applicants request grant of this petition and this application should be returned to active status without delay.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



---

Daniel J. Pereira, Ph.D.  
Attorney of Record  
Registration No. 45,518

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/07)

1382171\_1.DOC

## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	7967818
<b>Application Number:</b>	09129758
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	5113
<b>Title of Invention:</b>	MAMMAL NEURONAL ACID SENSING CATIONIC CHANNEL, CLONING AND APPLICATIONS THEREOF.
<b>First Named Inventor/Applicant Name:</b>	RAINER WALDMANN
<b>Customer Number:</b>	22850
<b>Filer:</b>	Marvin Jay Spivak/Kathy Mankin
<b>Filer Authorized By:</b>	Marvin Jay Spivak
<b>Attorney Docket Number:</b>	328255US0PCT
<b>Receipt Date:</b>	07-JUL-2010
<b>Filing Date:</b>	05-AUG-1998
<b>Time Stamp:</b>	15:24:00
<b>Application Type:</b>	U.S. National Stage under 35 USC 371

### Payment information:

Submitted with Payment	no
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### File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		328255USDEC.PDF	1366795 6c354c6f82b382a9c83d4d36d44a748f0b083435	yes	25



	Multipart Description/PDF files in .zip description		
	Document Description	Start	End
	Miscellaneous Incoming Letter	1	1
	Oath or Declaration filed	2	25

**Warnings:**

**Information:**

Total Files Size (in bytes):	1366795
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This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

**New Applications Under 35 U.S.C. 111**

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

**National Stage of an International Application under 35 U.S.C. 371**

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**New International Application Filed with the USPTO as a Receiving Office**

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.



OBLON, SPIVAK, MCCLELLAND MAIER  
& NEUSTADT, L.L.P.  
1940 Duke Street  
Alexandria, VA 22314

In re Application of:	:	
WALDMANN et al	:	DECISION ON PETITION
Application No.: 09/129,758	:	UNDER 37 CFR 1.137(b) AND
PCT No.: PCT/FR98/00270	:	PAPERS UNDER 37 CFR 1.42
Int. Filing Date: 11 Feb 1998	:	
Priority Date: 11 Feb 1997	:	
Attorney's Docket No.: 328255US0PCT	:	
For: MAMMAL NEURONAL ACI	:	
SENSING CATIONIC CHANNEL, CLONING	:	
AND APPLICATIONS THEREOF	:	

This is in response to the "37 CFR 1.137(b) Petition to Revive" filed 09 April 2010, and the submission filed 07 July 2010, which has been treated as a request for status under 37 CFR 1.42.

### **BACKGROUND**

On 11 February 1998, applicants filed international application no. PCT/FR98/00270 designating the United States and having a priority date of 11 February 1997. There is no record of a Demand for international preliminary examination being filed within 19 months from the priority date. Accordingly, the 20-month deadline under former 37 CFR 1.494 to pay the basic national fee to avoid abandonment expired at midnight of 12 October 1998 (11 October 1998 fell on a Sunday).

On 05 August 1998, applicants filed, *inter alia*, a transmittal letter, a non-English copy of PCT application no. PCT/FR98/00270, a declaration (unexecuted), and a communication entitled "Request for the Acceptance of Non-English Application Under 37 CFR 1.52(d)". The submission was accompanied by payment of \$130 for the fee required under §1.52(d) and did not include deposit account authorization to charge any outstanding fees.

On 31 August 1998, a "Notice to File Missing Parts-Filing Date Granted" was mailed to applicants indicating a deficiency in the basic filing fee.

On 01 February 1999, applicants filed a response to the 31 August 1998 Notice including payment of the required fees and an executed declaration. Shortly thereafter, on 02 March 1999, an official Filing Receipt was mailed to applicants identifying the present application as a U.S.

national stage application of PCT/FR98/00270. See "Transmittal of Errors in Filing Receipt" filed by applicants on 25 March 1999.

On 09 April 2010, applicants filed the petition under 37 CFR 1.137(b) considered herein.

On 07 July 2010, applicants filed declarations executed by, *inter alia*, legal representatives of a deceased inventor. The submission has been treated as a request for status under 37 CFR 1.42.

## DISCUSSION

### I. Petition Under 37 CFR 1.137(b)

As indicated above, the present application was initially identified by the Office as a U.S. national stage application under 35 U.S.C. 371, and this indication has remained throughout the subsequent eleven years of prosecution.<sup>1</sup> However, the application was never formally processed as a national stage application. For example, a "Notification of Acceptance Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495" (Form PCT/DO/EO/903) was never issued. While applicants' initial submission of 05 August 1998 does not include the typical documents associated with a U.S. national phase submission (e.g., a Form PTO-1390 or similar transmittal letter indicating a submission under 35 U.S.C. 371, or a declaration executing the international application), the "Request for the Acceptance of Non-English Application Under 37 CFR 1.52(d)" does evidence an intent to enter the U.S. national phase under 35 U.S.C. 371.<sup>2</sup> Accordingly, the initial Office indication that the present application is a U.S. national phase application under 35 U.S.C. 371 of PCT/FR98/00270 is appropriate.

Pursuant to former 37 CFR 1.494, which is applicable to international application PCT/FR98/00270, the international application became abandoned as to the United States for failure to timely pay the full U.S. basic national fee required under 35 U.S.C. 371(c)(1) prior to the expiration of 20 months from the priority date. The Notice mailed to applicants on 31 August 1998 was in error.

Pursuant to 37 CFR 1.137(b), a petition to revive the present application based upon unintentional abandonment must include: (1) the proper reply, unless previously filed; (2) the petition fee under 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional; and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

With respect to item (1), the U.S. basic national fee has been paid.

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<sup>1</sup> See, e.g., Office Action dated 30 September 1999 restricting inventions based on lack of unity under PCT Rule 13, and Request for Corrected Filing Receipt dated 18 November 2002.

<sup>2</sup> The Request states: "To secure the effective PCT and French priority dates, it is necessary that this application be filed on August 5, 1998, to enter the United States national phase." (Emphasis added). The submission under 37 CFR 1.52(d) was unnecessary, as the requirement for an English translation of an international application entering the U.S. national phase is governed by 35 U.S.C. 371 and 37 CFR 1.494 or 1.495.

With respect to item (2), the petition fee has been paid.

With respect to item (3), the petition includes the required statement of unintentional delay.

With respect to item (4), a terminal disclaimer and fee are not required.

## II. Request for Status Under 37 CFR 1.42

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent. See 37 CFR 1.42. Such oath or declaration must satisfy the requirements of 37 CFR 1.497(b)(2), which provides:

*(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.*

The original declaration filed 01 February 1999 identifies a deceased inventor (Guy Champigny) but fails to comply with 37 CFR 1.497(b)(2), as it fails to state the relationship of the persons to the inventor and fails to include the residence, citizenship and mailing addresses of such persons. In addition, while three such persons are indicated, only one signature appears. Furthermore, the declaration contains non-initialed/non-dated alterations (e.g., name of third inventor "Lingueglia" has been altered). For these reasons, the declaration filed 01 February 1999 cannot be accepted.

Applicants filed new declarations on 07 July 2010. However, these declarations also fail to comply with the provisions of 37 CFR 1.497(b)(2), as the mailing address and citizenship of the legal representatives have not been provided. In addition, the declaration fails to include the citizenship of the deceased inventor, as required under 37 CFR 1.497(a). Finally, the submission does not include complete copies of each declaration executed by the inventors and legal representatives. For these reasons, the declarations filed 07 July 2010 cannot be accepted.


## CONCLUSION

For the above reasons, the petition under 37 CFR 1.137(b) to revive international application PCT/FR98/00270 as to the United States is **GRANTED**.

The request for status under 37 CFR 1.42 is **DISMISSED**.

Applicants have **TWO (2) MONTHS** from the mail date of this decision to file an oath or declaration in compliance with 37 CFR 1.497. Failure to timely file the proper reply will result in **ABANDONMENT** of the application. Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Boris Milef  
PCT Legal Examiner  
Office of PCT Legal Administration  
Telephone: (571) 272-3288  
Facsimile: (571) 273-0459

## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	8422688
<b>Application Number:</b>	09129758
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	5113
<b>Title of Invention:</b>	MAMMAL NEURONAL ACID SENSING CATIONIC CHANNEL, CLONING AND APPLICATIONS THEREOF.
<b>First Named Inventor/Applicant Name:</b>	RAINER WALDMANN
<b>Customer Number:</b>	22850
<b>Filer:</b>	Marvin Jay Spivak/Kathy Mankin
<b>Filer Authorized By:</b>	Marvin Jay Spivak
<b>Attorney Docket Number:</b>	328255US0PCT
<b>Receipt Date:</b>	15-SEP-2010
<b>Filing Date:</b>	
<b>Time Stamp:</b>	13:30:49
<b>Application Type:</b>	U.S. National Stage under 35 USC 371

### Payment information:

Submitted with Payment		no			
File Listing:					
Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		328255USDECLARATION.PDF	1352922	yes	26
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	Multipart Description/PDF files in .zip description		
	Document Description	Start	End
	Miscellaneous Incoming Letter	1	1
	Oath or Declaration filed	2	26

**Warnings:**

**Information:**

<b>Total Files Size (in bytes):</b>	1352922
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**This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.**

**New Applications Under 35 U.S.C. 111**

**If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.**

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**New International Application Filed with the USPTO as a Receiving Office**

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UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

OBLON, SPIVAK, MCCLELLAND, MAIER  
& NEUSTADT, LLP  
1940 Duke Street  
Alexandria, VA 22314

**MAILED**

**APR 20 2011**

**PCT LEGAL ADMINISTRATION**

In re Application of	:
WALDMANN et al	:
Application No: 09/129,758	:
PCT No.: PCT/FR98/00270	:
Int. Filing Date: 11 Feb 1998	:
Priority Date: 11 Feb 1997	:
Attorney's Docket No.: 328255US0PCT	:
For: MAMMAL NEURONAL ACI SENSING	:
CATIONIC CHANNEL, CLOSING AND	:
APPLICATIONS THEREON	:

This decision is in response to the submission filed 15 September 2010, which is being treated as a renewed request for status under 37 CFR 1.42.

**BACKGROUND**

In a decision mailed 15 July 2010, applicants' petition to revive the present application under 37 CFR 1.137(b) was granted and the request for status under 37 CFR 1.42 was dismissed. The decision set a two-month time period to furnish an oath or declaration in compliance with 37 CFR 1.497. The decision noted that declarations filed 07 July 2010 failed to comply with 37 CFR 1.497 because they failed to identify the mailing address and citizenship of the legal representatives and the citizenship of the deceased inventor, and did not include complete copies of the executed declarations.

On 15 September 2010, applicants filed declarations considered herein.

**DISCUSSION**

**Foreign language declarations**

37 CFR 1.69(b), provides:

*(b) Unless the text of any oath or declaration in a language other than English is in a form provided by the Patent and Trademark Office or in accordance with PCT Rule 4.17(iv), it must be accompanied by an English translation together with a statement that the translation is accurate, except that in the case of an oath or declaration filed under § 1.63, the translation may be filed in the Office no later than two months from the date applicant is notified to file the translation*



In the present case, the declarations are in a language other than English and are not in a form provided by the Office. Accordingly, the declarations cannot be accepted absent a statement that the English translation is accurate.

**Status under 37 CFR 1.42**

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent. See 37 CFR 1.42. Such oath or declaration must satisfy the requirements of 37 CFR 1.497(b)(2), which provides:

*(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.*

In response to the decision mailed 15 July 2010, applicants appear to have amended the previously executed declarations filed 07 July 2010 to include the "mailing address" of the legal representatives, and an indication that the legal representatives and deceased inventor are "French". It is improper to amend a previously executed declaration. See MPEP §605.04(a), which states, in pertinent part:

*In summary, it is emphasized that the application filed must be the application executed by the applicant and it is improper for anyone, including counsel, to alter, rewrite, or partly fill in any part of the application, including the oath or declaration, after execution of the oath or declaration by the applicant. This provision should particularly be brought to the attention of foreign applicants by their United States counsel since the United States law and practice in this area may differ from that in other countries.*

*Any changes made in ink in the application or oath prior to signing should be initialed and dated by the applicants prior to execution of the oath or declaration.*

\*\*\*

See also MPEP §602.01:

*The wording of an oath or declaration cannot be amended, altered or changed in any manner after it has been signed. \*\*\**

It is also not clear that the indication "French" refers to citizenship, as opposed to another indication, e.g., residency. Identification of citizenship is a statutory requirement. See 35 U.S.C. 115. Further, it is noted that while three "legal representatives" have executed the declaration, only one initialed the citizenship of the deceased inventor. If the basis for the legal

representatives executing the declaration on behalf of the deceased inventor is that they are the sole heirs, and an executor or administrator has not been appointed, then all heirs must attest to the citizenship.

### **CONCLUSION**

For reasons above, the request for status under 37 CFR 1.42 is **DISMISSED**, without prejudice.

Applicants have **ONE (1) MONTH** from the mail date of this decision to file an oath or declaration in compliance with 37 CFR 1.497(a)-(b) overcoming the above-noted defects. Failure to timely file the proper reply will result in **ABANDONMENT** of the application. Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Boris Milef/

Boris Milef  
PCT Legal Examiner  
Office of PCT Legal Administration  
(571) 272-3288

## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	10134664
<b>Application Number:</b>	09129758
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	5113
<b>Title of Invention:</b>	MAMMAL NEURONAL ACID SENSING CATIONIC CHANNEL, CLONING AND APPLICATIONS THEREOF.
<b>First Named Inventor/Applicant Name:</b>	RAINER WALDMANN
<b>Customer Number:</b>	22850
<b>Filer:</b>	Marvin Jay Spivak/Kathy Mankin
<b>Filer Authorized By:</b>	Marvin Jay Spivak
<b>Attorney Docket Number:</b>	328255US0PCT
<b>Receipt Date:</b>	20-MAY-2011
<b>Filing Date:</b>	
<b>Time Stamp:</b>	12:28:08
<b>Application Type:</b>	U.S. National Stage under 35 USC 371

### Payment information:

Submitted with Payment	no				
<b>File Listing:</b>					
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1		328255USPET.pdf	1731767 8c0eb1d11e9e361732ab139b4de3446c285b97c	yes	30

	Multipart Description/PDF files in .zip description		
	Document Description	Start	End
	Miscellaneous Incoming Letter	1	1
	Petition for review by the Office of Petitions.	2	5
	Oath or Declaration filed	6	30

**Warnings:**

**Information:**

Total Files Size (in bytes):	1731767
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**New Applications Under 35 U.S.C. 111**

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DOCKET NO: 328255US0PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
RAINER WALDMANN, ET AL : EXAMINER: BASI  
SERIAL NO: 09/129,758 :  
FILED: AUGUST 5, 1998 : GROUP ART UNIT: 1646  
FOR: MAMMAL NEURONAL ACI :  
SENSING CATIONIC CHANNEL,  
CLONING AND APPLICATIONS  
THEREOF

**RENEWED PETITION FOR STATUS UNDER 37 CFR 1.42**

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Decision mailed April 20, 2011, Applicants again request that the Declaration filed on September 15, 2010 be accepted and the application afforded status under 37 CFR 1.42.

As outlined in the Decision mailed April 20, 2011, on April 14, 2010 the undersigned and Mr. Milef of the PCT Legal Office had a telephone discussion wherein MR. Milef indicated that the USPTO objects to the inventor Declaration filed on Feb 1, 1999 for lack of following the appropriate rules for filing a Declaration with a deceased inventor.

Applicants filed a new Declaration on July 7, 2010 but that was determined by the USPTO to be insufficient so another Declaration was filed on September 15, 2010. The Decision of April 20, 2011 objects to that Declaration because:

- (A) The Declaration contains language other than English;
- (B) The changes of the legal representatives were improperly done; and
- (C) The residency of the legal representatives is alleged to be unclear.

Regarding (A), the Declaration does contain French in the first column with the corresponding text in English provided in the second column. This is a form that is widely used by the attorneys of record and has been accepted in thousands of patent applications filed in the USPTO. In any case, a certification is attached to this renewed petition that the Declaration form that was sent to the inventors including both English and French is true and accurate translation from French to English.

Regarding (B), there are six inventors listed on the Declaration, each of those inventors and the legal representatives signed those Declarations separately and then collated together to get all of those people in one filing. See MPEP 605.04(a):

An oath or declaration under 37 CFR 1.63 by each actual inventor must be presented. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. >Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration (by combining the signature pages).<

The inventors other than the deceased inventor Guy Champigny signed the Declaration separately and then the legal representatives signed a separate page in September 2010. This is appropriate under the USPTO procedures. The alterations that those legal representatives made to the single page of the Declaration that they signed are initialed and dated. Further, any changes that are not deemed to have been initialed and dated are made adjacent to the inventor's signature and were made at that particular time, i.e., contemporaneous change and signature. Therefore, the alteration was accompanied by the appropriate signature and date as required when the document was changed.

Regarding (C) and the indication of French, it is clear that French means their citizenship as their residence is separately indicated by their respective addresses as opposed

Application No. 09/129,758  
**37 CFR 1.137(B) Petition to Revive**

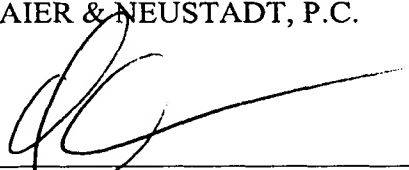
to the term "France" which is a geographical indication of a place, i.e., residency. That is clear from the Declaration.

In view of the foregoing, Applicants request grant of this petition, the status under 37 CFR 1.42.

Should further questions remain, the officer in charge of reviewing this petition is requested to contact the undersigned to resolve the matter expediently.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



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#### CERTIFICATION

This is to certify that the following is, to the best of our  
knowledge and belief, a true and accurate translation into  
FRENCH of the attached document(s) relating to:

#### DECLARATION FOR PATENT APPLICATION

written in ENGLISH

*It is true*  
NEWTYCE COMMUNICATIONS, INC.

Sworn to and subscribed before me  
this 2nd day of June, 2005

*Marjorie Jimenez*  
NOTARY PUBLIC

MARJORIE JIMENEZ  
Notary Public, State of New York  
Qualified in Queens County  
No. 01JI6027417  
Commission Expires July 6, 2007





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OBLON, SPIVAK, MCCLELLAND, MAIER  
& NEUSTADT, LLP  
1940 Duke Street  
Alexandria, VA 22314

**MAILED**

JUL 29 2011

PCT LEGAL ADMINISTRATION

In re Application of  
WALDMANN et al  
Application No: 09/129,758  
PCT No.: PCT/FR98/00270  
Int. Filing Date: 11 Feb 1998  
Priority Date: 11 Feb 1997  
Attorney's Docket No.: 328255US0PCT  
For: MAMMAL NEURONAL ACI SENSING  
CATIONIC CHANNEL, CLOSING AND  
APPLICATIONS THEREON

:  
:  
: DECISION ON PAPERS  
:  
: UNDER 37 CFR 1.42  
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This decision is in response to the "Renewed Petition for Status Under 37 CFR 1.42" filed 20 May 2011.

In a decision mailed 20 April 2011, applicants' request for status under 37 CFR 1.42 was dismissed for the following reasons: applicants failed to comply with the provisions of 37 CFR 1.69(b) for accepting foreign language declarations; uncertainty regarding the inclusion of citizenship of the legal representatives and deceased inventor; and the declarations were amended after execution.

In response, applicants submitted a statement of translation accuracy in compliance with 37 CFR 1.69(b); resolved the uncertainty regarding citizenship; and confirmed the re-execution of the declarations by the legal representatives.

Accordingly, the request for status under 37 CFR 1.42 is **GRANTED**.

This application is being forwarded to the Office of Patent Application Processing for mailing of a Notification of Acceptance Under 35 U.S.C. 371 indicating a §371(c)(1), (2) and (4) date of 15 September 2010.

/Boris Milef/

Boris Milef  
PCT Legal Examiner  
Office of PCT Legal Administration  
(571) 272-3288



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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/129,758	RAINER WALDMANN	328255US0PCT
22850		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.		
1940 DUKE STREET		
ALEXANDRIA, VA 22314		
INTERNATIONAL APPLICATION NO.		
PCT/FR98/00270		
I.A. FILING DATE	PRIORITY DATE	
02/11/1998	02/11/1997	

**CONFIRMATION NO. 5113**  
**371**  
**ABANDONMENT/TERMINATION**  
**LETTER**



\*OC000000049446386\*

Date Mailed: 08/23/2011

**NOTIFICATION OF ABANDONMENT**

The United States Patent and Trademark Office in its capacity as a Designated / Elected Office (37 CFR 1.495) has made the following determination:

- Per Decision dated 7-15-10

Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.495, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

SHELBY J MILLER

Telephone: (571) 272-0384